

TITLE VI
CORPORATION

CHAPTER 51
ADMINISTRATION

[Prior to 12/17/86, Revenue Department[730]]

701—51.1(422) Definitions.

51.1(1) When the word “department” appears herein, it refers to and is synonymous with the “Iowa Department of Revenue and Finance”; the word “director” is the “Director of Revenue and Finance” or the director’s authorized assistants and employees; the word “tax” is the “corporation income tax”; and the word “return” is the “corporation income tax return.”

The administration of the corporation income tax is a responsibility of the department. The department is charged with the administration of the corporation income tax, subject always to the rules, regulations and direction of the director.

51.1(2) The term “corporation” as used in divisions II and III of Iowa Code chapter 422 and in these rules includes not only corporations which have been created or organized under the laws of Iowa, but also those which are qualified to do, or are doing business in Iowa, in a corporate or organized capacity, by virtue of creation or organization under the laws of the United States or some state, territory or district or of a foreign country. The term “corporation” is not limited to the artificial entity usually known as a corporation, but includes also an association, a trust classed as an association because of its nature or its activities, a joint stock company, and certain kinds of partnerships. Any association or organization which is required to report as a corporation, for federal income tax purposes under the Internal Revenue Code, as amended, shall be considered to be a corporation for the purposes of Iowa income tax on corporations. For tax years beginning on or after January 1, 1987, the term “corporation” includes publicly traded partnerships which are taxed as corporations under the Internal Revenue Code. For tax years beginning on or after July 1, 1994, the term corporation includes limited liability companies taxed as corporations under the Internal Revenue Code. For tax years beginning on or after January 1, 1997, the term “corporation” includes partnerships taxed as corporations under the Internal Revenue Code.

51.1(3) The term “association” is not used in the law in any narrow or technical sense. It includes any organization created for the transaction of designated affairs, or the attainment of some object, which like a corporation continues notwithstanding that its members or participants change, and the affairs of which, like corporate affairs, are conducted by a single individual, a committee, a board, or some other group, acting in a representative capacity. It is immaterial whether such organization is created by an agreement, a declaration of trust, a statute, or otherwise. It includes a voluntary association, a joint stock association or company, a business trust, a Massachusetts trust, a common law trust, a partnership association, and any other type of organization, by whatever name known, which is not, within the meaning of the law, a trust or an estate, or a partnership. An investment trust of the type commonly known as a management trust is an association, and a trust of the type commonly known as a fixed investment trust, is an association if there is power under the trust agreement to vary the investment of the certificate holders. If the conduct of the affairs of a corporation continues after the expiration of its charter, or the termination of its existence, it becomes an association.

51.1(4) The term “Internal Revenue Code” means the Internal Revenue Code of 1954 prior to the date of its redesignation as the Internal Revenue Code of 1986 or the Internal Revenue Code of 1986, whichever is applicable.

51.1(5) The terms “consolidation” and “corporate merger” have the following meaning in regard to corporate reorganizations. A “consolidation” is unification of two or more constituent corporations into a single newly existing corporation in which the new corporation takes over assets and assumes liabilities of constituent corporations which pass out of existence; a “corporate merger” is distinguished by continuing existence of one of the constituent corporations into which other corporations are merged. *Handley v. Wyandotte Chemicals Corp.*, 352 N.W.2d 447, 450, 118 Mich. App. 423.

This rule is intended to implement Iowa Code section 422.32 as amended by 1997 Iowa Acts, House File 266.

701—51.2(422) Statutes of limitation.

51.2(1) *Periods of audit.*

a. The department has three years after a return has been filed or three years after the return became due, including any extensions of time for filing, whichever time is the later, to determine whether any additional tax other than that shown on the return is due and owing. This three-year statute of limitations does not apply in the instances specified in paragraphs “*b*,” “*c*,” “*d*,” “*e*,” “*f*” and “*g*.”

b. If a taxpayer fails to include in the return such items of gross income as defined in the Internal Revenue Code, as amended, as will under that Code extend the statute of limitations for federal tax purposes to six years, the correct amount of tax due may be determined by the department within six years from the time the return is filed, or within six years after the return became due, including any extensions of time for filing, whichever time is the later.

c. If a taxpayer files a false or fraudulent return with intent to evade tax, the correct amount of tax due may be determined by the department at any time after the return has been filed.

d. If a taxpayer fails to file a return, the periods of limitation so specified in Iowa Code section 422.25 do not begin to run until the return is filed with the department.

e. While the burden of proof of additional tax owing under the six-year period or the unlimited periods is upon the department, a prima facie case of omission of income, or of making a false or fraudulent return, shall be made upon a showing of a federal audit of the same income, a determination by federal authorities that the taxpayer omitted items of gross income or made a false or fraudulent return, and the payment by the taxpayer of the amount claimed by the federal government to be the correct tax or the admission by the taxpayer to the federal government of liability for that amount.

f. In addition to the periods of limitation set forth in paragraph “a,” “b,” “c,” “d,” or “e,” the department has six months after notification by the taxpayer of the final disposition of any matter between the taxpayer and the Internal Revenue Service with respect to any particular tax year to make an examination and determination. Final disposition of any matter between the taxpayer and the Internal Revenue Service triggers the extension of the statute of limitations for the department to make an examination and determination, and the extension runs until six months after the department receives notification and a copy of the federal document showing the final disposition or final federal adjustments from the taxpayer. *Van Dyke v. Iowa Department of Revenue and Finance*, 547 N.W.2d 1. This examination and determination is limited to those matters between the taxpayer and the Internal Revenue Service which affect Iowa taxable income. *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review*, 414 N.W.2d 113 (Iowa 1987). The notification shall be in writing in any form sufficient to inform the department of final disposition, and attached to the notification shall be a photo reproduction or carbon copy of the federal document which shows the final disposition and any schedules necessary to explain the federal adjustments. The notification and copy of the federal document shall be mailed, under separate cover, to the Examination Section, Compliance Division, Iowa Department of Revenue and Finance, P.O. Box 10456, Des Moines, Iowa 50306. Any notification and copy of the federal document which is included in, made a part of, or mailed with a current year Iowa corporation income tax return will not be considered as proper notification for the purposes of beginning the running of the six-month period.

When a taxpayer’s income or loss is included in a consolidated federal corporation income tax return, notification shall include a schedule of adjustments to the taxpayer’s income, a copy of the revenue agent’s tax computation, a schedule of revised foreign tax credit on a separate company basis if applicable, and a schedule of consolidating income statements after federal adjustments.

g. In lieu of the above periods of limitation for any prior year for which an overpayment of tax or an elimination or reduction of an underpayment of tax due for that prior year results from the carryback to such prior year of a net operating loss or net capital loss, the period shall be the period of limitations for the taxable year of the net operating loss or net capital loss which results in such carryback.

h. The department may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

If an assessment or refund adjustment is appealed (protested under rule 701—7.41(17A)) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue involved in such appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation. Nothing in this rule shall prevent the making of an assessment or refund adjustment for the purpose of taking into account the impact upon Iowa net income of federal audit adjustments.

51.2(2) Waiver of statute of limitations. Waivers entered into before July 1, 1989. If the taxpayer files with the department a request to waive the period of limitations, the limit of time for audit of the taxpayer’s return will thereby be extended for a designated period. An approved request carries a limitation of 36 months’ interest from the due date that the return was required to be filed up to and including the expiration of the waiver agreement.

In the event that an assessed deficiency or overpayment is not paid within the waiver period, interest accrues from the date of expiration of the waiver agreement to the date of payment. *Northern Natural Gas Company v. Forst*, 205 N.W.2d 692 (Iowa 1973); *Phillips Petroleum Company v. Bair*, State Board of Tax Review, Case No. 64, May 15, 1975.

51.2(3) *Waiver of statute of limitations.* Waivers entered into on or after July 1, 1989. When the department and the taxpayer enter into an agreement to extend the period of limitation, interest continues to accrue on an assessed deficiency or overpayment during the period of the waiver. The taxpayer may claim a refund during the period of the waiver.

51.2(4) *Amended returns filed within 60 days of the expiration of the statute of limitations for assessment.* If a taxpayer files an amended return on or after April 1, 1995, within 60 days prior to the expiration of the statute of limitations for assessment, the department has 60 days from the date the amended return is received to issue an assessment for applicable tax, interest, or penalty.

This rule is intended to implement Iowa Code sections 422.25, 422.30, and 422.35.

701—51.3(422) Retention of records.

51.3(1) Every corporation subject to the tax imposed by Iowa Code section 422.33 (whether or not the corporation incurs liability for the tax) shall retain its books and records as required by Section 6001 of the Internal Revenue Code and Treasury Regulation Section 1.6001-1(e) including the federal schedules required by 701—subrule 52.3(3). For taxpayers using an electronic data interchange process or technology also see 701—subrule 11.4(4).

51.3(2) In addition, records relating to the computation of the Iowa apportionment factor, allocable income and other deductions or additions to federal taxable income shall be retained so long as the contents may be material in the administration of the Iowa Code under the statutes of limitation for audit specified in section 422.25.

This rule is intended to implement Iowa Code sections 422.25 and 422.70.

701—51.4(422) Cancellation of authority to do business. If a corporation required by Iowa Code section 422.40 to file any report or return (including returns of information at source) or to pay any tax or fee, fails to do so within 90 days after the time prescribed for making such returns or payment, the director may certify such fact to the secretary of state, who shall thereupon cancel the articles of incorporation or certificate of authority (as the case may be) of such corporation, and the rights to such corporation to carry on business in the state of Iowa as a corporation shall thereupon cease. The statute provides for a penalty of not less than \$100 nor more than \$1,000 for any person or persons who continue to exercise or attempt to exercise any powers, privileges, or franchises granted under articles of incorporation or certificate of authority after cancellation of the same.

This rule is intended to implement Iowa Code section 422.40.

701—51.5(422) Authority for deductions. Whether and to what extent deductions shall be allowed depends upon specific legislative acts, and only where there is a clear provision can any particular deduction be allowed. Therefore, a deduction will be allowed only if the taxpayer can establish to the satisfaction of the department the validity and correctness of such deduction. 71 Am. Jur. 2d State and Local Taxation, Subsection 518 (1973).

This rule is intended to implement Iowa Code section 422.35.

701—51.6(422) Jeopardy assessments.

51.6(1) A jeopardy assessment may be made where a return has been filed and the director believes for any reason that collection of the tax will be jeopardized by delay, or where a taxpayer fails to file a return, whether or not formally called upon to file a return. The department is authorized to estimate the income of the taxpayer upon the basis of available information, add penalty and interest, and demand immediate payment.

51.6(2) A jeopardy assessment is due and payable when the notice of the assessment is served upon the taxpayer. Proceedings to enforce the payment of the assessment by seizure or sale of any property of the taxpayer may be instituted immediately.

This rule is intended to implement Iowa Code section 422.30.

701—51.7(422) Information confidential. Iowa Code sections 422.20 and 422.72 apply generally to the director, deputies, auditors, examiners, agents, present or former officers and employees of the department. Disclosure of information from a taxpayer's filed return or report or other confidential state information by department of revenue and finance personnel to a third person is prohibited under the above sections. Other persons having acquired information disclosed in a taxpayer's filed return or report or other confidential state information will be bound by the same rules of secrecy under these sections as any member of the department and will be subject to the same penalties for violations as provided by law. See rule 701—6.3(17A).

This rule is intended to implement Iowa Code sections 422.20, 422.38, and 422.72.

701—51.8(422) Power of attorney. For information regarding power of attorney, see rule 701—7.34(421) and 7.38(421,17A).

701—51.9(422) Delegation of authority to audit and examine. Pursuant to statutory authority the director delegates to the authorized assistants and employees the power to examine returns and make audits; and to determine the correct amount of tax due, subject to review by or appeal to the director.

This rule is intended to implement Iowa Code section 422.71.

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